

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEROME MOJECA DUNKLE,

Plaintiff,

v.

KITSAP COUNTY SHERIFF'S OFFICE  
JAIL, OFFICERS GUARDS,

Defendants.

No. C14-5642 RBL-KLS

**REPORT AND RECOMMENDATION**  
**Noted For: December 5, 2014**

*Pro se* Plaintiff Jerome Mojeca Dunkle, proceeding *in forma pauperis*, brings this 42 U.S.C. § 1983 civil rights action alleging that his civil rights were violated when he was “tazed” by deputy sheriff’s at the Kitsap County Jail. Dkt. 9. The undersigned noted several deficiencies in the original complaint and declined to serve it. Plaintiff attempted to sue the Kitsap County Sheriff’s Office and the Kitsap County Jail, neither of which is a person for purposes of the Civil Rights Act. Further, plaintiff had not identified the individual officers allegedly involved in the “tazing” incident. Dkt. 9.

The undersigned ordered Plaintiff to file an amended complaint curing these defects. Dkt. 10. Mr. Dunkle filed an amended complaint that contains the same defects as the original. Dkt. 15. In the caption of the amended complaint Mr. Dunkle states “Kitsap County Sheriffs [sic] Office Jail officers Guards the Tazer assult [sic] hospitalized me.” Dkt. 15. Plaintiff fails to

1 name any defendant by name and, as the previous Court order noted, neither the Kitsap County  
2 Sheriff's Office nor the Kitsap County jail are persons for the purpose of the Civil Rights Act.

3 In addition the undersigned has repeatedly ordered Mr. Dunkle not to include his date of  
4 birth or social security number in documents that he files. Dkt. 5, 14. Mr. Dunkle has included  
5 this personal information in nearly every filing despite orders instructing him not to do so.

6 Accordingly the undersigned recommends dismissal of this action with prejudice prior to service  
7 for failure to comply with Court orders.  
8

### 9 **PLAINTIFF'S ALLEGATIONS**

10 Plaintiff claims that he was in the Kitsap County Jail prior to his being moved to prison.  
11 Plaintiff is currently housed at the Special Offender Unit of the Monroe Reformatory. Dkt. 9, p.  
12 2. Plaintiff stated that while in the jail he was involved in an incident with the county jail staff  
13 where he was "tazed." Dkt. 15. He seeks to sue these individual officers, along with the County  
14 Sheriff's Office or Jail, but he does not name any individual defendant and instead in the body of  
15 the complaint he lists the "officers guards working the day of incedent [sic]." Dkt. 15, p. 3.  
16 Plaintiff does not give the Court any specific date when this incident allegedly occurred, but he  
17 does state that his vision has been blurry ever since this incident "seven to ten years" ago. Dkt.  
18 15, page 4.  
19

### 20 **DISCUSSION**

21 Fed. R. Civ. P. 41(b) provides for dismissal of an action for failure to comply with a court  
22 order. The undersigned ordered Mr. Dunkle to cure defects in his complaint, name individual  
23 persons, and stop placing private information about him in his court filings. Dkt. 5, 10, and 14.  
24 Mr. Dunkle has failed to comply with these Court orders. The undersigned sent Mr. Dunkle an  
25 order to amend the complaint that spelled out the defects in the original and told plaintiff what he  
26

1 needed to do to correct the defects in his original complaint. Dkt. 10. Further, because of  
2 concern about private information being in the file the Court twice instructed Mr. Dunkle to stop  
3 including personal information in his filings. Dkt. 5 and 14. Plaintiff has ignored these court  
4 orders and, three months after the action was originally filed, the plaintiff has still not filed a  
5 complaint that can be serve on any named defendant.

6  
7 After Mr. Dunkle filed his amended complaint (Dkt. 15) he filed three motions: a motion  
8 to amend his complaint, a motion for additional time, and a motion for appointment of counsel.  
9 Dkt. 19, 20, and 21. The undersigned has already given Mr. Dunkle an opportunity to file an  
10 amended complaint and Mr. Dunkle was given guidance explaining the defects in the original  
11 complaint. Dkt. 10. Further, Mr. Dunkle did not provide a copy of a proposed amended  
12 complaint along with his motion as required by Local Civil Rule 15. The Local Rule states:

13  
14 A party who moves for leave to amend a pleading, or who seeks to amend a  
15 pleading by stipulation and order, must attach a copy of the proposed amended  
16 pleading as an exhibit to the motion or stipulation. The party must indicate on the  
17 proposed amended pleading how it differs from the pleading that it amends by  
18 bracketing or striking through the text to be deleted and underlining or  
19 highlighting the text to be added. The proposed amended pleading must not  
20 incorporate by reference any part of the preceding pleading, including exhibits. If  
21 a motion or stipulation for leave to amend is granted, the party whose pleading  
22 was amended must file and serve the amended pleading on all parties within  
23 fourteen (14) days of the filing of the order granting leave to amend, unless the  
24 court orders otherwise.

25 The undersigned recommends denying Mr. Dunkle's motion to amend (Dkt. 19) because  
26 he has not complied with this court's Local Rules and because he has already been given the  
chance to file an amended complaint. Further, Mr. Dunkle has admitted that the incident in  
question happened seven to ten years ago (Dkt. 15, p. 4). The statute of limitation for a civil  
rights action in Washington is three years. *Joshua v. Newell*, 871 F.2d 884, 886 (9th Cir.1989)  
(citing R.C.W. § 4.16.080(2)). Thus, Mr. Dunkle's attempt to amend the action appears futile.

1 The undersigned also recommends denial of the motion for additional time. Mr. Dunkle  
2 asks for an unlimited amount of time to pursue this action. Dkt. 20. In the motion itself Mr.  
3 Dunkle asks to extend time “forever.” *Id.* In the caption of an attached document he asks to  
4 extend time “to the end time.” Dkt. 20-1.

5 Mr. Dunkle also filed a motion for appointment of counsel. Dkt. 21. No constitutional  
6 right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353  
7 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th  
8 Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”)  
9 However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil  
10 litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113  
11 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998)  
12 (emphasis supplied.) To decide whether exceptional circumstances exist, the court must evaluate  
13 both “the likelihood of success on the merits [and] the ability of the petitioner to articulate his  
14 claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn v. Escalderon*,  
15 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.  
16 1983)). The undersigned recommends denial of this motion because the action would be barred  
17 by Washington State’s statute of limitation. Further, Mr. Dunkle has not named a proper  
18 defendant who could be served and the action has not made it past the initial screening phase set  
19 forth in 28 U.S.C. § 1915A.

20 Dismissal pursuant to Fed. R. Civ. P. 41(b) acts as adjudication on the merits unless the  
21 order states otherwise. *See* Fed. R. Civ. P. 41(b). Plaintiff did not comply with the Court order  
22 to cure the defects in his complaint or the orders to stop including personal information in his  
23 filings. Accordingly the undersigned recommends dismissal of this action with prejudice.

**CONCLUSION**

Plaintiff has been given ample opportunity to cure the defects in his complaint and guidance regarding the defects he needed to cure. He has failed to comply with the order to cure the defects in his filings. Plaintiff has also failed to comply with Court orders regarding not placing personal information in his filings. The undersigned recommends that this case be **dismissed with prejudice.**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **December 5, 2014**, as noted in the caption.

**DATED** this 17<sup>th</sup> day of November, 2014.

  
Karen L. Strombom  
United States Magistrate Judge